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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,622	10/24/2003	Hector Vargas-Garza	6173	7196

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EXAMINER

COE, SUSAN D

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/691,622

**Applicant(s)**

VARGAS-GARZA, HECTOR

**Examiner**

Susan D. Coe

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

1. Claims 1-4 are currently pending.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

2. Claim 1 is considered indefinite to the point where a clear meaning cannot be ascertained. Claim 1 refers to "microbiological associations," but the definition of this phrase is unclear. In addition, "the medicinal herb's" lacks antecedent basis in the claim. The claim refers to a preparation method for black tea. Is the black tea the "medicinal herb?" Or is the black tea added to a medicinal herb? No fermentation step takes place in this claim; thus, it is unclear how "microbial associations" are integrated into the claim. In addition, the claim refers to "small" tea bags. However, it is unclear what sizes of tea bag are intended to be encompassed by "small." In addition, it is unclear what temperatures are encompassed by "cool" in line 5.

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For the sake of examination, the parts of this claim that appear to be clear claim a method of preparing black tea using 17.5 liters of boiling water, 25 tea bags, and 1,150 grams of brown sugar. The prepared tea is cooled at room temperature. The claim is examined as such.

3. In claim 2, the phrases “microbiological associations” and “medicinal herb’s” are unclear for the reasons discussed above. In addition, the phrase “washed up” in line 5 is unclear. It is assumed this phrase means that the pineapples were washed prior to use. In addition, the use of parentheses in line 5 is indefinite because it is unclear if the enclosed material is or is not a required limitation of the claim. In addition, line 7 refers to previously prepared black tea. It is unclear if this is referring to the tea prepared in claim 1. Furthermore, it is unclear what thicknesses are encompassed by “thick layer” as recited in line 10.

For the sake of examination, the parts of this claim that appear to be clear claim a method for fermenting pineapple in a black tea solution. The pineapple is first washed, then placed in the black tea solution. The pineapple / black tea mixture is covered with a flannel and allowed to rest at 30 degrees C for 15 days. A layer forms on the top of this mixture. This layer is the “microbiological association.”

4. In claim 3, the phrases “microbiological associations and “medicinal herb’s” are unclear for the reasons discussed above. In addition, claim 3 refers to “the previously prepared microbiological association.” Claim 3 depends on claim 1. Claim 1 does not appear to teach how to make the “microbiological association;” thus, it is unclear how the “microbiological association” is prepared. In addition, the claim refers to “using several proprietary methods.” It is unclear what these “proprietary methods” are.

5. In claim 4, the phrases "microbiological associations and "medicinal herb's" are unclear for the reasons discussed above. In addition, the phrase "the obtained liquid and solid" lacks antecedent basis. Furthermore, the claim refers to herbs with "other therapeutic qualities." No particular therapeutic qualities have been mentioned in previous claims; thus, it is unclear what is encompassed by "other" qualities. In addition, this claim is improper because it does not contain any positive limitations. It only states that the "liquid and solid" material "will be used." It does not state that any action must be carried out.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,543,165.

As discussed above, applicant's claim 1 is indefinite to the point where a search is almost precluded. However, in the interest of compact prosecution, claim 1 has been interpreted as claiming a method of making of preparing black tea using 17.5 liters of boiling water, 25 tea bags, and 1,150 grams of brown sugar. The prepared tea is cooled at room temperature.

US '165 teaches a method of brewing black tea. Black tea is added to boiling water. Sugar is added to the water and tea mixture. This mixture is removed from heat and allowed to cool while the tea steeps (see column 2, lines 16-26). This reference shows it was known in the

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art at the time of the invention that tea is brewed by adding tea to boiling water. It is also known to use sugar to sweeten the tea. The reference does not teach using the specific quantities of water, tea, and sugar claimed by applicant. However, the amount of these items are clearly obvious to vary depending on the quantity and qualities of the tea. In addition, the reference does not specifically teach using brown sugar as the sugar. However, brown sugar is a known type of sugar. It is considered an obvious modification of the sweetening of tea to use brown sugar as the sugar.

7. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,395,315 in view of US Pat. Pub. No. 2004/0192550.

As discussed above, applicant's claims 1-4 are indefinite to the point where a search is almost precluded. However, in the interest of compact prosecution, the claims have been interpreted as claiming a method for fermenting pineapple in a black tea solution. The pineapple is first washed, then placed in the black tea solution. The pineapple / black tea mixture is covered with a flannel and allowed to rest at 30 degrees C for 15 days. A layer forms on the top of this mixture. This layer is the "microbiological association."

US '315 teaches a method of making a plant growth promoter by fermenting pineapple and other fruits with a saccharide solution. The saccharide is specifically taught as brown sugar (see abstract). The fruit is washed and pulverized and the saccharide is added. The mixture is allowed to ferment at a range of temperatures (see column 4, lines 1-20). The fermented fruit composition is used to promote plant growth (see column 7, lines 51-53). The reference does teach specifically adding black tea to the fruit prior to the fermentation.

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US '550 teaches a method of making a plant growth promoter by fermenting black tea. Sugar and black tea are added to boiling water. This mixture is allowed to cool to room temperature. This mixture is inoculated with microorganisms and allowed to ferment. The fermented material is used to promote plant growth (see paragraphs 70-75). Thus, since both fermented pineapple and fermented black tea are known to be used for promoting plant growth, a person of ordinary skill in the art would reasonably expect that these two substances could be fermented together to form a plant growth regulator composition. This reasonable expectation for success would motivate an artisan of ordinary skill to add black tea to the pineapple and ferment these two together.

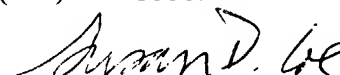
The references do not teach all of the fermentation parameters claimed by applicant. However, parameters for a fermentation are well known in the art as obvious to optimize in order to best form the desired product.

8. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.



Susan D. Coe  
Primary Examiner  
Art Unit 1654

November 29, 2004